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United States

OCTOBER TERM, 1967

Office-Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

No. 964

LAS VEGAS LOCAL JOINT EXECUTIVE BOARD OF CULINARY WORKERS AND BARTENDERS; CULINARY WORKERS UNION, LOCAL NO. 226; and BARTENDERS UNION, LOCAL NO. 165,

Petitioners,

vs.

LAS VEGAS HACIENDA, INC. and CASINO OPERATIONS, INC.,

Respondents.

ADDITIONAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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In the United States District Court
for the District of Nevada

No. 773

Las Vegas Local Joint Executive Board of Culinary Workers and Bartenders; Culinary Workers Union, Local No. 226; and Bartenders Union, Local No. 165,
Petitioners,

vs.

Las Vegas Hacienda, Inc., and Casino Operations, Inc.,
Respondents.

JUDGMENT

This Cause having duly come for decision on the stipulated facts of the parties hereto and upon the transcript of testimony from a prior hearing filed herein, and upon briefs of the parties, and proof having been presented therefrom on behalf of all the respective parties and the Court being fully advised in the premises, and a Memorandum Decision dated June 17, 1966 having been rendered and findings of fact and conclusions of law having been made by the Court on the 25th day of July, 1966, and filed in this Court,

It Is Ordered, Adjudged And Decreed that the Petitioners' Petition to Compel Arbitration be, and the same hereby is denied, with costs to the Respondents.

Dated this 25th day of July, 1966.

/s/ Ray McNichols
United States District Judge

Prepared by Respondents' Attorneys
Mendoza, Foley & Garner
401 South Third Street
Las Vegas, Nevada

By:/s/ John F. Mendoza
John F. Mendoza

Filed July 27, 1966,
Oliver F. Pratt, Clerk.

In the United States District Court
for the District of Nevada

No. 773

Las Vegas Local Joint Executive Board of Culinary Workers and Bartenders; Culinary Workers Union, Local No. 226; and Bartenders Union, Local No. 165,
Petitioners,

vs.

Las Vegas Hacienda, Inc., and Casino Operations, Inc.,
Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Cause came on for Decision by the Court, sitting without a jury, upon agreed Stipulation of Facts by all of the parties, including testimony taken at a previous hearing and previously filed by all of the parties herein, and the Court having considered all of the evidence and the stipulation of the parties, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. That the Respondent, Las Vegas Hacienda, Inc., is a California corporation authorized to do and doing business in the State of Nevada, and is the corporation which operates that hotel commonly called the Hacienda Hotel.

2. That the Respondent, Casino Operations, Inc., is a Nevada corporation and operates the casino located within the Hacienda Hotel.

3. That the Petitioners, Las Vegas Local Joint Executive Board of Culinary Workers and Bartenders, Culinary Workers Union, Local No. 226, and Bartenders Union, Local No. 165, are a labor organization representing employees in an industry affecting commerce as defined in the Act.

4. That Casino Operations, Inc. is engaged in commerce and in a business affecting commerce as the same is presently interpreted within the meaning of Section 301 of the Labor Management Relations Act. (29 U.S.C.A. §185)

5. That Las Vegas Hacienda, Inc. is engaged in commerce and in a business affecting commerce as the same is presently interpreted within the meaning of Section 301 of the Labor Management Relations Act. (29 U.S.C.A. §185)

6. That the Respondent, Las Vegas Hacienda, Inc., was a member of the Resort Hotel Association which said Resort Hotel Association was the bargaining agent for its members for the terms and conditions of employment of said employees of the association. That Mr. Roy B. Flippen acted for and on behalf of the Resort Hotel Association.

7. That the Respondent, Casino Operations, Inc., was not a member of the Resort Hotel Association.

8. That a contract was executed between the Resort Hotel Association and the Petitioners which said contract covered the conditions of employment of the employees of the Resort Hotel Association from the period of March 10, 1964 to March 10, 1967.

9. That subsequent thereto, on July 7, 1964, an agreement was entered into by and between the Petitioners and the Resort Hotel Association covering the wage rate of change girls and booth cashiers who were employees of the members of the Resort Hotel Association. That contained in the original agreement between the Resort Hotel Association and the Petitioners was an arbitration clause which required that the members of the Resort Hotel Association and the Petitioners submit to arbitration disputes which occurred between the parties.

10. That Mr. Roy D. Flippen did not represent the Respondent, Casino Operations, Inc., in negotiating and signing the collective bargaining contract in question. That the Respondent, Casino Operations, Inc., was not, and is not bound by said contract.

11. That the Respondent, Casino Operations, Inc., is under no binding contractual obligation to arbitrate with the Petitioners.

12. That the change girls and booth cashiers whose status is the subject of the demand for arbitration are the employees of the Respondent, Casino Operations, Inc.

13. That the Respondent, Las Vegas Hacienda, Inc., is a party to and bound by the collective bargaining contract presently in force.

14. That none of the employees of the Respondent, Las Vegas Hacienda, Inc., are involved in the Petitioners' demand for arbitration.

15. That the Respondent, Casino Operations, Inc., is not owned, operated, or substantially under the con-

trol of, or substantially in control of the Respondent, Las Vegas Hacienda, Inc., but each is a separate and complete entity dealing with one another under long established and carefully delineated contractual terms since approximately 1957.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction to entertain the proceedings herein.

2. That the Respondent, Casino Operations, Inc., not being a signatory to the contract, and not being owned, operated, or substantially under the control of, or substantially in the control of the Respondent, Las Vegas Hacienda, Inc., is not bound by the terms of the contract and therefore, the Petitioners having failed to establish a binding contract requiring arbitration of the disputes herein, the Petitioners' Petition is denied.

Let Judgment be entered accordingly.

Dated this 25th day of July, 1966.

/s/ Ray McNichols
United States District Judge

Prepared by Respondents' Attorneys,
Mendoza, Foley & Garner
401 South Third Street
Las Vegas, Nevada

By /s/ John F. Mendoza
John F. Mendoza

Filed July 27, 1966,
Oliver F. Pratt, Clerk.

In the United States District Court
for the District of Nevada

No. 773

Las Vegas Local Joint Executive Board of Culinary Workers and Bartenders; Culinary Workers Union, Local No. 226; and Bartenders Union, Local No. 165,
Petitioners,

vs.

Las Vegas Hacienda, Inc., and Casino Operations, Inc.,
Respondents.

MEMORANDUM DECISION

This matter is fully submitted to the Court for determination based on a stipulation of facts, a series of agreed exhibits, certain prior recorded testimony of various persons taken before a trial examiner of the National Labor Relations Board, and after the filing of briefs. The petitioners, labor unions, seek to compel the respondents to submit to arbitration certain issues regarding change girls and booth cashiers alleged to be employed by the respondents.

Preliminarily, the respondents challenge the jurisdiction of the Court as to the respondent, Casino Operations, Inc., contending that said respondent is not engaged in commerce or in business affecting com-

merce as the same is defined in the Labor Management Relations Act (29 U.S.C.A. §185). Essentially the other issue raised involves the determination of whether or not the respondent, Casino Operations, Inc., is subject to any binding agreement to arbitrate with the petitioners. This second issue brings into question the business relationship between the respondent, Las Vegas Hacienda, Inc. and Casino Operations, Inc.

The Court having carefully considered all of the facts agreed upon, the exhibits presented, the delineated testimony from the prior hearing and having carefully scrutinized the briefs, concludes that the relief sought by the petitioners must be denied. In this regard, the Court advises the parties that it makes the following determinations:

I.

I adopt as Findings of the Court the stipulated facts as set forth in the Stipulation of Facts on file herein.

II.

Casino Operations, Inc., is engaged in commerce and in business affecting commerce as the same is presently interpreted within the meaning of Sec. 301 of the Labor Management Relations Act (29 U.S.C.A. §185).

III.

The parties have agreed that the respondent, Las Vegas Hacienda, Inc., is so engaged in commerce and subject to the jurisdiction of the Court.

IV.

Clearly the petitioner is a labor organization representing employees in an industry affecting commerce as defined in the Act.

V.

The Court therefore has jurisdiction to entertain the proceedings.

VI.

Roy B. Flippin did not represent the respondent, Casino Operations, Inc., in negotiating and signing the collective bargaining contract in question.

VII.

Accordingly, the respondent, Casino Operations, Inc., was not, and is not, a signatory to the contract and not bound by it as a signatory.

VIII.

That respondent, Casino Operations, Inc., is not owned, operated or substantially under the control of or substantially in control of the petitioner, Las Vegas Hacienda, Inc., but each is a separate and complete entity dealing with one another under long established (since approximately 1957) and carefully delineated contractual terms.

IX.

The respondent, Casino Operations, Inc., is under no binding contractual obligation to arbitrate with the petitioners and this Court cannot require arbitration by a party not having bound itself to arbitrate.

X.

The change girls and booth cashiers, whose status is the subject of the demand for arbitration, are clearly the employees of Casino Operations, Inc.

XI.

It is agreed and accepted by the parties that the respondent, Las Vegas Hacienda, Inc., is a party to, and bound by, the collective bargaining contract presently in force. However, as none of the respondent Las Vegas Hacienda, Inc. employees are involved, it appears to be moot as to the obligations of Las Vegas Hacienda, Inc. to submit to arbitration, the question herein raised.

Accordingly, the Court concludes that the petitioners have failed to establish a binding contract requiring arbitration of the disputes in question herein and the petition must be denied. Counsel for the respondents will prepare, serve and lodge proposed formal Findings of Fact, Conclusions of Law and the proposed Judgment within thirty days from the date hereof. Petitioner may likewise present proposed Findings and Conclusions, or may await entry of the same by the Court and thereafter enter objections as provided in the Federal Rules of Civil Procedure.

Dated June 17, 1966.

/s/ Ray McNichols
District Judge

Filed June 20, 1966,
Oliver F. Pratt, Clerk.